

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12-cv-509-FDW
(3:01-cr-36-FDW-7)

IAN ANDRE PERSAUD,)
)
Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)
)

ORDER

This matter is before the Court on Respondent's Motion to Stay, (Doc. No. 20), seeking to hold this post-conviction matter in abeyance pending resolution of any certiorari petition in United States v. Wheeler, Fourth Circuit case number 16-6073. Petitioner had previously sought a stay pending the outcome of the Wheeler appeal in the Fourth Circuit, which is now moot. (Doc. No. 19). Petitioner's counsel opposes the abeyance request. See (Doc. No. 20 at 4).

Petitioner was convicted in the underlying criminal case of conspiracy to possess with intent to distribute cocaine and cocaine base and he was sentenced to life imprisonment and 10 years of supervised release. The Fourth Circuit affirmed on direct appeal, United States v. Persaud, 87 Fed. Appx. 869 (4th Cir. 2004), and the United States Supreme Court denied certiorari, Persaud v. United States, 124 S.Ct. 2866 (4th Cir. 2004).

Petitioner filed a § 2255 petition, case number 3:05-cv-217, that the Court denied on the merits. Persaud v. United States, 2006 WL 2229003 (W.D.N.C. Aug. 3, 2006). The Fourth Circuit dismissed Petitioner's appeal, United States v. Persaud, 215 Fed. Appx. 243 (4th Cir. 2007), and The Supreme Court denied certiorari. Persaud v. United States, 551 U.S. 1122 (2007).

Petitioner filed a petition in the instant case seeking relief under 28 U.S.C. § 2255, and

alternatively, 28 U.S.C. §§ 2241 and 1651. (Doc. No. 1). This Court dismissed the § 2255 claims as successive and denied relief on the alternative claims. Persaud v. United States, 2012 WL 5902557 (W.D.N.C. Nov. 26, 2012). The Fourth Circuit dismissed the appeal in part and affirmed in part. United States v. Persaud, 517 Fed. Appx. 137 (4th Cir. 2013). On certiorari review, Petitioner argued that he is entitled to relief under § 2241 based on two intervening decisions. The Government filed a brief in support of Petitioner's position. The Supreme Court vacated the Fourth Circuit's judgment and remanded for further consideration. Persaud v. United States, 571 U.S. 1172 (2014). The Fourth Circuit, in turn, granted the parties' motion to remand to this Court for further proceedings. (Doc. No. 13).

On remand, the Respondent's Motion to stay this case pending the Fourth Circuit's issuance of United States v. Surratt, Case Number 14-6851, was granted. (Doc. No. 15).

Presently before the Court are Respondent's Motions to stay this case pending the Fourth Circuit's decision in Wheeler, and now, the United States Supreme Court's decision on certiorari, if a certiorari petition is filed. The most recent motion states that Petitioner objects to the stay but he has not filed a memorandum in support of that position.

The Court finds that the disposition of this case may be affected by the outcome of Wheeler. Therefore, the Motion to Stay pending the Supreme Court's resolution of any certiorari petition will be granted. Respondent's earlier Motion to Stay pending the Fourth Circuit's decision will be denied as moot.

IT IS HEREBY ORDERED that:

(1) Respondent's Motion to Stay, (Doc. No. 20), pending certiorari is **GRANTED**.

The United States shall have 45 days after the United States decides not to file a petition for writ of certiorari in Wheeler, or if a certiorari petition is filed, 45 days

after is resolved by the Supreme Court, in which to file its response.

(2) Respondent's Motion to Stay, (Doc. No. 19), pending appeal is **DENIED** as moot.

Signed: September 4, 2018



Frank D. Whitney
Chief United States District Judge

